

ORDINANCE NO. 14-0017

AN ORDINANCE OF THE CITY OF MANHATTAN BEACH
AMENDING AND RESTATING MUNICIPAL CODE
PROVISIONS GOVERNING NUISANCES AND NUISANCE
ABATEMENT PROCEDURES

THE MANHATTAN BEACH CITY COUNCIL HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The City Council hereby amends Chapter 9.68 (Public Nuisances) in its entirety to read as follows:

“Chapter 9.68 NUISANCES

9.68.010 Public nuisance; General.

Anything injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, including but not limited to the conditions listed below, so as to interfere with the comfortable enjoyment of life or property by a neighborhood or by a considerable number of persons in the City, irrespective of whether the annoyance or damage inflicted upon individuals is unequal, shall constitute a public nuisance.

9.68.020 Public nuisance; Substandard or dangerous property conditions.

The following conditions are unlawful and constitute a nuisance:

- A. Any condition constituting a public nuisance or unsafe or substandard building as defined in state codes, common law and the City’s building regulations.
- B. Any condition caused or permitted to exist in violation of any provision of this Code.
- C. Any building or structural component thereof, which is partially destroyed, or otherwise structurally unsound. Where a building permit has been issued for the repair, construction or reconstruction of such building, it shall be a violation of this Chapter for the building to remain in such condition at any time beyond one month following the expiration of such building permit.
- D. Any building that has dry rot, warping, or termite or similar infestation.
- E. Any building that increases the danger of fire or other calamity because of conditions including but not limited to:
 - 1. Dilapidated condition;
 - 2. Deterioration;

3. Defective wiring, switches, gas lines, valves, pipes or any other component parts of the electric, gas, water, or plumbing systems.

F. Accumulation of any:

1. Junk, trash, boxes, debris, building materials, substantial quantities of loose earth, dirt, rocks, or pieces of concrete, except during construction performed pursuant to a valid building permit and in accordance with applicable construction rules and regulations;

2. Stagnant water;

3. Earth, dirt or sand that migrates from the property;

4. Combustible material;

5. Animal excrement, rotting produce, or a substance that produces a noxious odor.

G. Unsecured doorways, windows and other openings into vacant structures.

H. Vegetation on property that harbors rats, vermin, or other disease carriers.

I. Trees, weeds or other vegetation, which are dead, decayed, diseased or hazardous, or which protrude over or across a street or sidewalk so as to obstruct the clear passage of vehicles or pedestrians.

J. Camper shells, cargo containers or other mobile equipment, which are stored for more than 72 consecutive hours in a front or side yard and are visible from the public right-of-way or private property.

K. Inoperable, dismantled or wrecked motor vehicles, trailers or boats or parts thereof, which are visible from the public right-of-way or private property.

L. Dismantled, discarded, unused or deteriorating materials, machines, furniture, sinks, equipment, appliances, or other fixtures.

M. The operation or maintenance of any furnace, oven drier, bleacher, evaporator, roaster or other heating, drying, burning or charring device or apparatus, or any vat, storage yard, warehouse, shed or place where any raw or manufactured material or commodity is treated, dried, burned, charred or stored, from which noxious fumes or odors are emitted.

N. Deteriorated parking lots, which have pot holes, cracks or ridges that constitute a safety hazard to the public.

O. A building, or part thereof, which was constructed, or partially constructed, without complying with applicable provisions of this Code or other law.

P. Walls, fences, driveways, or walkways that are in a state of disrepair and create a safety hazard, including, but not limited to, the following conditions:

1. Broken, rotted or defective fence support posts or other structural members;

2. Chain link fence material that is damaged or broken;

3. Potholes and/or buckled asphalt or other ground materials.

Q. Any audible alarm that is not deactivated within 30 minutes of activation.

R. Feeding, or causing to be fed, any wild birds or other undomesticated animals, where such feeding creates any unsanitary condition, excessive noise, or property damage.

S. Graffiti visible from any public right-of-way or private property.

T. Any wall or fence constructed, or any hedge planted or maintained, in violation of this Code.

U. Any other condition which adversely affects the public health, welfare, and safety.

9.68.030 Nuisance abatement; Initial notice.

Whenever the Director of Community Development finds that a nuisance, as defined by Sections 9.68.010 and 9.68.020, exists on any property located in the City, the Director of Community Development shall provide written notification of the nuisance to the owner, and any lessee or occupant, and request that the nuisance be abated. For the purpose of this Chapter, the term "owner" shall mean the owner of record of the parcel of land on which the nuisance is maintained, based on the last equalized assessment roll or the supplemental roll, whichever is more current. The notification shall include a description of the nuisance and establish a reasonable abatement period not less than 30 days from the date of the notice. The notice shall state that if the nuisance is not abated, the City will seek all administrative costs, including reasonable attorneys' fees, incurred in connection with abating the nuisance. In addition, the notice shall state that if the nuisance is not promptly abated by the owner, such nuisance may be abated by the City, in which case the costs associated with such abatement, including reasonable attorneys' fees incurred in connection with such abatement, may constitute a special assessment or a lien against the property.

9.68.040 Voluntary compliance.

The owner, lessee or occupant of any property found to contain a nuisance under the provisions of this Chapter, may abate the nuisance at any time within the abatement period by taking all necessary steps to abate the nuisance, including but not limited to, rehabilitation, repair, removal or demolition of any buildings that constitute a nuisance. The Community Development Department shall be advised of the abatement and shall inspect the property to determine whether the nuisance has been abated to the Director of Community Development's satisfaction.

9.68.050 Failure to abate.

If a nuisance is not properly abated within the period established under the provisions of Section 9.68.030, the City Council may hold a hearing to determine if a nuisance exists and whether it should be abated.

9.68.060 Notice of hearing.

A written notice of hearing, substantially in the form contained in Section 9.68.070, shall be sent by certified mail to the owner at least 10 days prior to the date set for the City Council hearing. In addition, the notice shall be posted on the property at least 10 days before the date set for the City Council hearing. The City may also notify agents of the owner, lessees, occupants or persons in possession of the property by regular mail. The failure of any person to receive such notice shall not affect the validity of the proceedings.

9.68.070 Form of notice of hearing.

The City shall provide notice substantially in the following form:

NOTICE OF HEARING TO DECLARE AND ABATE NUISANCE

To the owner of record of the property located at [INSERT STREET ADDRESS], legally described as [INSERT LEGAL DESCRIPTION AND ASSESSOR'S PARCEL NUMBER].

Notice is hereby given that the Manhattan Beach City Council will hold a hearing at the City Council Chambers, located at 1400 Highland Avenue, Manhattan Beach, California, to consider whether the property described above constitutes a public nuisance, because of the following conditions:

If the City Council declares that the property, in whole or part, constitutes a public nuisance as defined by Manhattan Beach Municipal Code Sections 9.68.010 and 9.68.020, and if the nuisance is not promptly abated by the owner, such nuisance may be abated by the City, in which case the costs associated with such abatement, including reasonable attorneys' fees incurred in connection with such abatement, will constitute a special assessment or a lien against the property.

You will have an opportunity to provide oral and written material in connection this matter at _____ p.m. on _____, 20__.

Dated: _____

City Clerk

9.68.080 Hearing by the City Council.

At the time and place stated in the notice provided pursuant to Section 9.68.070, the City Council shall provide an opportunity for the owner, occupants, and other interested persons to comment on the alleged public nuisance and on proposed abatement measures.

9.68.090 Decision of the City Council.

After the close of the hearing, the City Council shall determine whether the property, or any part of the property, constitutes a public nuisance. If the City Council finds that a public nuisance exists, the City Council shall adopt a resolution declaring that a public nuisance exists at the subject property and order that the nuisance be abated by rehabilitation, repair, demolition, or any other measure, manner or method required to abate the nuisance. The resolution shall set forth the time within which the abatement shall be commenced and completed.

9.68.100 Mailing of the resolution.

The City shall mail the adopted resolution to the owner by certified mail. In addition, the resolution shall be posted on the property.

9.68.110 Voluntary abatement.

The owner or his or her designee may at his or her own expense, abate the nuisance prior to the expiration of the compliance dates set forth in the resolution. If the nuisance has been inspected by the Community Development Department and has been abated in accordance with the resolution, the City will provide to the property owner a notice of compliance.

9.68.120 Failure to comply; Abatement by the City.

If the nuisance has not been voluntarily abated, the Director of Community Development is authorized and directed to cause the nuisance to be abated, pursuant to a valid warrant issued by a court of competent jurisdiction, if required. Such abatement may be conducted by City forces or private contract. In furtherance of this section, the Director of Community Development, or designated representative, is expressly authorized to enter upon the property for the purposes of abating the nuisance, pursuant to a valid warrant issued by a court of competent jurisdiction, if required.

9.68.130 Recovery of costs.

A. The prevailing party in any action, administrative proceeding, or special proceeding to abate a public nuisance, or in any appeal or other judicial action arising therefrom, may recover its reasonable attorneys' fees in those actions or proceedings wherein the City elects, at the initiation of the individual action or proceeding, to seek recovery of its own attorneys' fees. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to any prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.

B. The City may collect the cost of abatement of any nuisance and related administrative costs, including but not limited to inspection costs, investigation costs, attorneys' fees and costs, and costs to repair and eliminate all substandard conditions by either: (i) obtaining a court order stating that this reimbursement requirement is a personal obligation of any person held responsible for creating, causing, committing or maintaining a public nuisance, recoverable by the City in the same manner as any civil judgment; (ii) recording a nuisance abatement lien pursuant to this Code against the parcel of land on which the nuisance is maintained; or (iii) imposing a special assessment pursuant to this Code against the parcel of land on which the nuisance is maintained.

9.68.140 Record of abatement costs; Notice of proposed assessment and lien.

A. The City Council shall hold a hearing to review and approve the record of the costs of abatement. The Finance Director, or his or her designee, shall prepare and submit to the City Council a report of all costs associated with abatement, including any costs incurred in inspection, investigation, boundary determination, measurement, abatement, attorneys' fees and costs, and associated clerical and administrative work.

B. At least 45 days prior to the City Council hearing, the City shall serve the owner of record with notice of the hearing and a copy of the itemized written report:

1. By certified mail; and

2. In the same manner as a summons in a civil action in accordance with California Code of Civil Procedure Section 415.10, *et seq.* If the owner of record, after diligent search cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of 10 days and publication thereof in a newspaper of general circulation published in the county in which the property is located pursuant to Government Code Section 6062.

C. The notice shall inform the owner of the proposed assessment and lien, including the proposed amount.

9.68.150 Cost hearing before City Council; Assessment and lien.

A. At the hearing, the City Council shall provide an opportunity for the owner, occupants, and other interested persons to comment on the report of abatement costs. The City Council shall modify the report, if necessary, and approve the report by resolution.

B. The City Council shall determine that the costs of abatement constitute a special assessment against the property or shall be a lien on the property for the amount of such assessment. The City shall not impose a lien on any owner-occupied residential dwelling.

9.68.160 Nuisance abatement lien.

A. A nuisance abatement lien shall be recorded in the Los Angeles County Recorder's office and from the date of recording shall have the force, effect, and priority of a judgment lien.

B. A nuisance abatement lien authorized by this Chapter shall specify the amount of the lien, the City's name, the date of the abatement order, the street address, legal description and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the owner of the parcel.

C. In the event that the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in subsection (B) of this section shall be recorded by the City. A nuisance abatement lien and the release of the lien shall be indexed in the grantor-grantee index.

D. A nuisance abatement lien may be foreclosed by the City as a money judgment. The City may recover from the property owner any costs incurred regarding the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien or as a condition of removing the lien upon payment.

9.68.170 Special assessment.

- A. As an alternative to the procedures set forth in Section 9.68.160, the City Council may impose a special assessment.
- B. The City shall provide the owner with notice of the imposition of the special assessment. The notice shall specify that that the property may be sold after three years by the tax collector for unpaid delinquent assessments.
- C. The assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment.

9.68.180 Refunds.

The City Council may order a refund of all or part of the assessment paid pursuant to this Chapter if it finds that all or part of the assessment was erroneously levied. An assessment or part thereof shall not be refunded unless a claim is filed with the City Clerk on or before six months after the assessment became due and payable. Any claim shall be verified by the person who paid the assessment, or his guardian, executor, or administrator.

9.68.190 Violations.

Any person violating any provision of this Chapter shall be guilty of a misdemeanor, unless such violation is subsequently prosecuted as an infraction pursuant to Section 1.04.010.”

SECTION 2. The City Council hereby repeals Chapter 4.60.

SECTION 3. CEQA Finding. The City Council hereby finds that this Ordinance is exempt from the requirements of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Sections 15060(c)(2), because the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, and 15060(c)(3), because the activity is not a project as defined in CEQA Guidelines Section 15378. The adoption of this Ordinance will not result in any direct physical change in the environment or any reasonably foreseeable indirect physical change in the environment. In addition, the adoption of this Ordinance, and any action pursuant to these nuisance abatement procedures, is exempt under CEQA Guidelines Section 15321 as an enforcement activity by the City.

SECTION 4. If any sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance. The City Council

hereby declares that it would have passed this Ordinance and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentence, clauses or phrases be declared unconstitutional or otherwise invalid.

SECTION 5. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause this Ordinance to be published within 15 days after its passage, in accordance with Section 36933 of the Government Code.

SECTION 6. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the 31st day after its passage.

PASSED, APPROVED AND ADOPTED this ___ day of _____, 2014.

AYES:
NOES:
ABSENT:
ABSTAIN:

WAYNE POWELL
Mayor

ATTEST:

LIZA TAMURA
City Clerk

APPROVED AS TO FORM:

QUINN M. BARROW
City Attorney